

Cyberpredator

s 204B *Criminal Code*

Prior to 1 January 2014

Transitional Sentencing Provisions: Each of the two tables is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
PNG	plead not guilty
poss	possess
ct	count
CSI	conditional suspended imprisonment
TES	total effective sentence
elec comm	electronic communication

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
9.	<p><i>Hine v The State of Western Australia</i></p> <p>[2010] WASCA 216</p> <p>Delivered 1/11/2010</p>	<p>Aged between 20 yrs and 23 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>No relevant prior criminal record.</p> <p>Experienced hearing difficulties since birth – negative affect social development.</p> <p>Struggled academically and held variety retail and factory positions.</p>	<p>7 x Use elec comm with intent to procure person believed to be child u16 to engage in sex activity s 204B(2)(b)(i) <i>Criminal Code</i>.</p> <p>4 x Possess child porn s 60(4) <i>Classification (Publications, Films & Computer Games) Enforcement Act</i>.</p> <p>13 x Sex pen 13-16yrs s 321(2) <i>Criminal Code</i>.</p> <p>1 x Indec deal 13-16yrs s 321(4) <i>Criminal Code</i>.</p> <p>2 x Indec record 13-16yrs s 321(6) <i>Criminal Code</i>.</p> <p>11 victims aged between 13 yrs and 15 yrs.</p> <p>Offending occurred over period approx 2 ½ yrs.</p> <p><u>Ct 1:</u> Relates to online chat that ended with appellant having sex with 15yr old in front seat of his car.</p> <p><u>Cts 2-5:</u> Relate to online chat in which appellant used a false name online and told 14yr old he was 18 and would pay her \$100 for oral sex. The appellant took victim to a car park and victim performed oral sex on appellant, receiving \$100.</p> <p><u>Cts 6 & 7:</u> Relate to appellant collecting victim from school and then picking up a friend of his. Alcohol was provided and victim performed oral sex on appellant while in car with his friend. Victim then performed oral sex on appellant's friend while appellant had sex with her.</p> <p><u>Ct 8:</u></p>	<p>Sentence range 12-18 mths imp.</p> <p>Sentence range 2-18 mths imp.</p> <p>Sentence range 20 mths-3 yrs imp. 12 mths imp. 6 mths; 18 mths imp.</p> <p>TES 12 ½ yrs imp.</p> <p>EFP.</p>	<p>Allowed – on totality only.</p> <p>TES reduced to 9 ½ yrs (indiv sentences not disturbed).</p> <p>Aggravating factors - lied about age, name and employment; offered money; engaged in grooming; offending persistent and over extended duration; only stopped when caught; considerable risk re-offending; abuse trust.</p>

			<p>Relates to appellant providing alcohol to victim until she was intoxicated. Appellant took photos of victim's breasts while she was in an unconscious state. Photos found on computer hard drive by police.</p> <p><u>Ct 9:</u> Relates to online chat with 15yr old and the discovery by police of 2 naked pictures of her on hard drive.</p> <p><u>Ct 10:</u> Relates to online chat with 13yr old. Appellant offered to pay victim if electronically send him photos of herself in various states of undress. Victim sent 9 photos of breasts and one of genitals (found on hard drive) but no money changed hands.</p> <p><u>Ct 11:</u> Involved victim from count 9. Appellant drove complainant to his house after she had an argument with her parents. Appellant took victim into his bedroom and told her she could stay if she had sex with him. Victim had sex with appellant.</p> <p><u>Cts 13-15:</u> Involved victim from counts 9 & 12 and two of their friends aged 14yrs. Appellant picked up three victims near school and drove them to Arena Joondalup. Went into toilet cubicle, one victim performed oral sex on appellant. Shortly after, appellant digitally penetrated vagina another victim. Shortly after that, appellant inserted penis into vagina of third victim. Appellant drove to bank and gave victims \$200 and dropped them off near the school.</p> <p><u>Cot 16:</u> Involved victim from count 11. Appellant</p>		
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		<p>masturbated in front of webcam, linked to victim's computer, on three occasions. Appellant asked victim to masturbate herself in front of her webcam.</p> <p><u>Ct 17:</u> Relates to online chats with 14 yr old over period 7 weeks which culminated in appellant and victim having sex in front seat of appellant's car in secluded location.</p> <p><u>Ct 18:</u> Relates to online chat in which appellant asked victim for oral sex in exchange for \$100. Victim refused and appellant said he had spent day having sex with underage girls of 14 and that she was next.</p> <p><u>Ct 19:</u> Relates to online chats with 14 yr old in which appellant used false name, job and age. Appellant asked victim to engage in sexual activity, offering \$100 for oral sex, \$200 for sexual intercourse and \$300 for a threesome. Victim refused.</p> <p><u>Cts 21-23:</u> Relate to 14 yr old victim whom appellant met online. In online chat, appellant offered \$200 for oral sex. Victim refused, appellant doubled offer to \$400. Victim again refused. Appellant requested topless pictures under guise of offering her employment at a clothing store (of which he purported to be the manager). Victim sent topless pictures which were found on appellant's computer. Appellant met victim in shopping centre and, in public toilets, made victim perform oral sex and paid her \$200.</p> <p><u>Cts 24-27:</u> Stem from police search of appellant's home – found 20 video files child porn (including some of victims); 219 still images of child pornography.</p>	
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<p>8.</p>	<p><i>Schaper v The State of Western Australia</i></p> <p>[2010] WASCA 178</p> <p>Delivered 9/09/2010</p>	<p>63 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Paedophilic tendencies which appellant recognised needed to be addressed.</p>	<p>Cts 1-4, 7, 9, 11-15 & 18: Use elec comm with intent to expose person believed to be child u16 to indecent matter s 204B(2)(b)(ii) <i>Criminal Code</i>.</p> <p>Cts 5, 6, 8, 10, 16, 17 & 19: Use elec comm with intent to procure person believed to be child u16 to engage in sex activity s204B(2)(b)(i) <i>Criminal Code</i>.</p> <p>Cts 20 & 21: Possess child porn s 60(4) <i>Classification (Publications, Films and Computer Games) Enforcement Act</i>.</p> <p>s 32 offence: Possess obscene article s 59(5) <i>Classification (Publications, Films and Computer Games) Enforcement Act</i>.</p> <p>Appellant used 4 different personas (Amanda 36 yr old female; Jess 14 yr old female; Mike 33 yr old male; Geoff male in 40s) Each persona had own role in process (Amanda used in grooming and Jess to normalise behaviour occurred with Geoff and Mike).</p> <p>Grooming process highly methodical with high degree cunning with desire to corrupt.</p> <p>Attempted to meet one child with intent pursuing sexual contact; one offence included discussing animal sex with 14 yr old; one offence told 14 yr old arranged multiple partners for her; offending included electronic transmission of offensive or pornographic material; 50 yr age disparity between appellant and child persona.</p> <p>Offending not isolated – over last 15 yrs used internet to pursue his interest in young girls.</p>	<p>Cts 1-4: 2 yrs imp each count.</p> <p>Cts 5-15: 2 yrs 6 mths imp each count.</p> <p>Cts 16-19: 3yrs impeach count.</p> <p>Cts 20 & 21: 1yr imp each count.</p> <p>s 32: \$1000 fine.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u></p> <p>Cts 1-4: 18 mths imp each count.</p> <p>Cts 5-15: 2 yrs imp each count.</p> <p>Cts 16-19: 2 yrs 4 mths imp each count.</p> <p>Cts 20-21: 8 mths imp each count.</p> <p>TES reduced to 3 yrs imp.</p> <p>EFP.</p> <p>Error in categorising offending as being in worst category.</p>
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<p>7.</p>	<p><i>The State of Western Australia v Rose</i></p> <p>[2010] WASCA 31</p> <p>Delivered 19/02/2010</p>	<p>25 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Living alone but subsequently returned to live at mother's home; supportive family.</p> <p>Left school at 13yrs to attend learning facility for children with difficult life circumstances – sentencing judge referred to him as “intellectually handicapped” in sentencing process. Lower than average intelligence and history behavioural problems related to anger control.</p>	<p>1 x Use elec comm with intent to expose person believed to be child u16 to indecent matter s 204B(2)(b)(ii) <i>Criminal Code</i>.</p> <p>2 x Use elec comm with intent to procure person believed to be child u16 to engage in sex activity s 204B(2)(b)(i) <i>Criminal Code</i>.</p> <p>Child persona aged 13 yrs. Appellant portrayed himself as 22 yrs.</p> <p>Contact initially made in internet chat-room - respondent asked for mobile phone number of child persona and a picture of her. Also made comment he was ‘too old’ for her.</p> <p>Respondent rang child persona next day and engaged in 7min conversation with her. Voice clearly sounded like that of a 13yr old. Respondent discussed meeting child persona and engaging in sexual relationship with her. Respondent gave child persona detailed instructions on how to masturbate using deodorant can. After phone call, respondent contacted child persona over internet chat-room. (ct 1). Discussed child persona's boyfriend, engaging in sexual relationship and repeated instructions relating to masturbation with deodorant can in belief child persona carrying those instructions out. Respondent asked for additional photo of child persona and turned on own webcam, revealing his face.</p> <p>Respondent rang child persona following day and engaged in 29min phone call. Spoke about masturbation technique, being in a boyfriend/girlfriend relationship and engaging in sexual activity with child persona. Later that day, respondent engaged child persona in on-line chat</p>	<p>18 mths imp each ct.</p> <p>TES 18 mths imp susp 18 mths.</p> <p>Medium-high risk re-offending.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u> 12 mths immed imp substituted each ct.</p> <p>TES 12 mths imp.</p> <p>EFP.</p> <p>NB: Appeal only challenged suspension of sentence.</p> <p>Owen JA categorised attempt to meet child persona “a seriously aggravating feature”.</p> <p>Newnes JA categorised offending as “toward the upper end of the range of seriousness” – age difference and lie regarding own age; sexually explicit material transmitted; respondent initiate phone contact twice and engaged in sexually explicit conversation; arrested in process meeting child persona with intent having unprotected sex with her.</p> <p>Short offending period nullified by fact behaviour escalated and respondent</p>
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			<p>lasting approx 88min (ct 2). Respondent discussed meeting child persona for sexual activity – discussed what he would do when they met and transmitted live footage of him masturbating and exposing his penis.</p> <p>Engaged in on-line chat two days later (ct 3) and arranged to meet child persona – spoke of sexual activity they would engage in and asked in prefer condom on or off, noting it is better without a condom the first time.</p> <p>Intercepted by police on way to meeting with child persona – claimed child persona said she was 16yrs old and that he was just meeting her to break it off with her.</p>		<p>already arranged meeting for sexual purposes in that time frame.</p>
6.	<p><i>The State of Western Australia v Johnson</i></p> <p>[2009] WASCA 224</p> <p>Delivered</p>	<p>26 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No prior criminal record.</p> <p>Stable background and happy childhood in spite of parent’s divorce. Good work history and prospects.</p> <p>Good character with no substance abuse issues.</p>	<p><u>Cts 2, 4,5,6,8 & 9:</u> Use elec comm with intent to expose person believed to be child u16 to indecent matter s 204B(2)(b)(ii) <i>Criminal Code</i>.</p> <p><u>Cts 1, 3 &7:</u> Use elec comm with intent to procure person believed to be child u16 to engage in sex activity s 204B(2)(b)(i) <i>Criminal Code</i>.</p> <p>Child persona aged 13 yrs (14th birthday one week after contact initiated).</p> <p><u>Cts 1, 3 & 7:</u> Relate to online conversations in which appellant gave detailed instructions to child persona on how to masturbate and encouraged her to do so. Other counts relate to sexually explicit on-line conversations. Appellant voluntarily ceased contact with child persona and blocked her from his contacts list.</p> <p><u>Cts 9 & 10:</u></p>	<p>Cts 2 & 9: 8mths imprisonment each.</p> <p>Cts 4, 5, 6, 8 &10: 6mths imp each.</p> <p>Cts 1, 3 & 7: 12mths imp each.</p> <p>TES 2 yrs imp susp 2 yrs.</p> <p>Low risk re-offending.</p>	<p>Dismissed .</p> <p>NB: only suspension of sentence challenged.</p>

			<p>Occurred after this was done and were at the instigation of the child persona, not the appellant.</p> <p>No escalation in frequency or content of online communications – did not attempt to meet child persona.</p> <p>Did not use assumed identity/details or give younger age.</p> <p>Did not transmit pornographic material and appellant did not masturbate during online contact.</p> <p>No child pornography found on appellant's computer.</p>		
5.	<p><i>Reid v State of Western Australia</i></p> <p>[2009] WASCA 237</p> <p>Delivered 22/12/2009</p>	<p>21-22 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Prior criminal record – stealing; attempt to pervert course justice; fraud; unlawful wounding; traffic offences; breach offences relating to orders and suspended sentences.</p> <p>Minimal work history; history alcohol abuse; heavy use of ecstasy and amphetamines.</p>	<p>4 x Use elec comm with intent to expose person believed to be child u13 to indecent matter s 204B(3)(b)(ii) <i>Criminal Code</i>.</p> <p>10 x Use elec comm with intent to procure person believed to be child u13 to engage in sex activity s 204B(3)(b)(i) <i>Criminal Code</i>.</p> <p>Child persona aged 12yrs. Offending period lasted 5 weeks.</p> <p>Offences relate to online chats and included conversations of sexually explicit nature and asking child persona to masturbate and providing instructions.</p> <p>Did not attempt to meet child persona and voluntarily stopped contact.</p> <p>Did not transmit sexually explicit material.</p>	<p>15 mths imp each ct.</p> <p>TES 3 yrs 9 mths imp.</p> <p>EFP.</p>	<p>Allowed – total sentence disproportionate to criminality.</p> <p>TES reduced to 2 yrs 3 mths imp.</p> <p>EFP.</p>

<i>Transitional Provisions Repealed (14/01/2009)</i>					
<p><i>Speering v The State of Western Australia</i></p> <p>[2008] WASCA 266</p> <p>Delivered 22/12/2008</p>	<p>29 yrs at time sentencing.</p> <p>Convicted after fast track PG.</p> <p>No prior criminal record – prior excellent character.</p> <p>Mental illness (depression, anxiety, intimacy problems & social isolation) - did not lessen need for general deterrence as did not cause offending but rather explain it. Appellant proactive in addressing issues.</p> <p>University educated – worked as teacher for 3yrs before swapping to OSH and welfare work.</p> <p>Care for brother in live-in capacity due to brother's debilitating mental condition (no evidence brother would not be cared for if appellant imprisoned).</p>	<p>2 x Use elec comm. With intent to expose person believed to be u13 to indecent matter s 204B(3)(b)(ii) <i>Criminal Code</i>.</p> <p>1 x Use elec comm with intent to procure person believed to be child u13 to engage in sex activity s 204B(3)(b)(i) <i>Criminal Code</i>.</p> <p>Child persona aged 12 yrs.</p> <p><u>Ct 1:</u> Relates to online conversation in teen chat room. Appellant engaged child persona in conversation about masturbation and then sent a picture of erect penis after ejaculation.</p> <p><u>Ct 2:</u> Occurred shortly after count 1 – appellant gave child persona instructions on how to masturbate.</p> <p><u>Ct 3:</u> Occurred on different date – appellant engaged same child persona in online conversation. Appellant asked child persona if she had masturbated since last chat and encouraged her to continue doing it.</p> <p>Did not attempt to meet child persona.</p>	<p>12 mths imp each ct.</p> <p>TES 2yrs.</p> <p>EFP.</p> <p>PSR and psych reports – medium to high risk re-offending.</p> <p>Remorse and accepted responsibility.</p>	<p>Dismissed – court held sentence was severe but not so severe as to reflect error.</p>	
<p><i>The State of Western Australia v Porter</i></p> <p>[2008] WASCA</p>	<p>24 yrs at time offending.</p> <p>Convicted after fast track PG</p> <p>No prior criminal record.</p>	<p>3 x Use elec comm with intent to procure person believed to be child u13 to engage in sex activity s 204B(3)(b)(i) <i>Criminal Code</i>.</p> <p>4 x Use elec comm. with intent to expose person believed to be u13 to indecent matter s</p>	<p>12mths imp each count</p> <p>TES 12 mths imp susp12 mths.</p>	<p>Allowed.</p> <p>TES 12 mths immed imp substituted.</p>	

<p>154 Delivered 24/07/2008</p>	<p>Former police officer – after resigning from position went on web to look for jobs and ended up on pornography sites and met the child persona.</p>	<p>204B(3)(b)(ii) <i>Criminal Code</i>. Child persona 13 yrs. Appellant portrayed himself as 17 yrs.</p> <p>Counts relate to sexually explicit online and telephone conversations. Did not attempt to meet child persona but did send live footage of himself masturbating.</p> <p>Offending period 3mths.</p>	<p>Low risk of re-offending.</p>	<p>Seriousness and repetitive nature of offending made suspension inappropriate.</p> <p>NB: Double jeopardy applied to State appeals.</p>
<p><i>The State of Western Australia v Freemantle</i> [2008] WASCA 98 Delivered 30/04/2008</p>	<p>28 yrs at time offences. Convicted after PG. No relevant prior criminal record. Educated with stable employment; married with a young son - having marital problems at time offending and drinking heavily after work.</p>	<p>4 x Use elec comm. with intent to expose person believed to be u13 to indecent matter s 204B(3)(b)(ii) <i>Criminal Code</i>. 1 x Use elec comm with intent to procure person believed to be child u13 to engage in sex activity s 204B(3)(b)(i) <i>Criminal Code</i>.</p> <p>Child persona 12yrs.</p> <p>Engaged in 10 online conversations. <u>Cts 1 & 2:</u> Relate to sending photos of a penis. <u>Ct 3:</u> Relates to instructing child to masturbate. <u>Ct 4:</u> Exposure to indecent language in discussing taking the virginity of child, ejaculation and oral sex. <u>Ct 5:</u> Related to discussions about menstruation, pregnancy, ejaculation and the child bringing a friend for appellant to have sex with as well. Asked child to meet with him for purpose engaging in sexual acts.</p>	<p>ISO 18mths.</p> <p>Medium to low risk re-offending; did not fully understand seriousness of offending.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u> 12 mths immed imp each ct. TES 12mths imp substituted EFP.</p> <p>NB: Double jeopardy applied to State appeals</p>

			Conduct described as “particularly serious”. Voluntarily blocked child and ceased contact as appellant was starting to work things out with wife.		
<i>The State of Western Australia v Collier</i>	24 yrs at time offending. Convicted after fast track guilty plea. Motivated by loneliness and desire for intimacy.	3 x use elec comm with intent to procure person believed to be child u13 to engage in sex activity s204B(3)(b)(i) <i>Criminal Code</i> . Child persona 12yrs. Offending related to online chats of sexually explicit nature. <u>Ct 1:</u> Related to online conversation in which appellant explained nature sexual intercourse and encouraged child persona to meet him for purpose engaging in sex. <u>Ct 2:</u> Related to online conversation in which appellant told child persona how to masturbate and encouraged her to do so. <u>Ct 3:</u> Related to online conversation in which appellant instructed child persona how to masturbate and arranged to meet her at a park. Arrested when went to meeting he had arranged with child persona.	2yrs imp each ct. TES 2 yrs imp susp 2yrs. Medium to low risk re-offending; taken some positive steps to reduce risk. Declared a reportable offender pursuant to s13 <i>Community Protection (Offender Reporting) Act 2004</i> (WA).	Allowed. <u>Sentences on appeal:</u> 18 mths immed imp each ct. TES 18mth imp substituted. EFP. 5mth gap between decision and imposition original sentence – progress in treatment had been made. NB: Double jeopardy applied to State appeals First appeal judgement to deal with offences under s204B <i>Criminal Code</i> .	

Transitional Provisions Enacted (31/08/2003)

Office of the Director of Public Prosecutions